

(m) *Interested party*, in the context of a bid protest, is one whose direct economic interest has been or would be affected by the award or failure to award an FAA contract. Proposed subcontractors are not “interested parties” within this definition and are not eligible to submit protests to the ODRA. Subcontractors not in privity with the FAA are not interested parties in the context of a contract dispute.

(n) *Intervenor* is an interested party other than the protester whose participation in a protest is allowed by the ODRA. For a post-award protest, the awardee of the contract that is the subject of the protest will be allowed, upon timely request, to participate as an intervenor in the protest. In such a protest, no other interested parties will be allowed to participate as intervenors.

(o) *Legal Representative* is an individual(s) designated to act on behalf of a party in matters before the ODRA. Unless otherwise provided under §§ 17.15(c)(2), 17.27(a)(1), or 17.59(a)(6), a Notice of Appearance must be filed with the ODRA containing the name, address, telephone and facsimile (Fax) numbers of a party’s legal representative.

(p) *Neutral* refers to an impartial third party in the ADR process chosen by the parties to act as a facilitator, mediator, arbitrator, or otherwise to aid the parties in resolving a protest or contract dispute. A neutral can be a DRO or a person not an employee of the ODRA.

(q) *ODRA* is the FAA’s exclusive forum acting on behalf of the Administrator, pursuant to the statutory authority granted by Public Law 108–176, Section 224, to provide dispute resolution services and to adjudicate matters within its jurisdiction. The ODRA may also provide non-binding dispute resolution services in matters outside of its jurisdiction where mutually requested to do so by the parties involved.

(r) *Parties* include the protester(s) or the contractor, the FAA, and any intervenor(s).

(s) *Pre-Disputes* mean an issue(s) in controversy concerning an FAA contract or solicitation that, by mutual agreement of the parties, is filed with the ODRA. See subpart G of this part.

(t) *Product Team*, as used in these rules, refers to the FAA organization(s) responsible for the procurement or contracting activity, without regard to funding source, and includes the Contracting Officer (CO). The Product Team, acting through assigned FAA counsel, is responsible for all communications with and submissions to the ODRA in pending matters.

(u) *Screening Information Request* (SIR or Solicitation) means a request by the FAA for documentation, information, presentations, proposals, or binding offers concerning an approach to meeting potential acquisition requirements established by the FAA.

(v) A *Special Master* is a non-FAA attorney or judge who has been assigned by the ODRA to act as its finder of fact, and to make findings and recommendations based upon AMS policy and applicable law and authorities in the Adjudicative Process.

#### § 17.5 Delegation of authority.

(a) The authority of the Administrator to conduct dispute resolution and adjudicative proceedings concerning acquisition matters is delegated to the Director of the ODRA.

(b) The Director of the ODRA may redelegate to Special Masters and DROs such delegated authority in paragraph (a) of this section as deemed necessary by the Director for efficient resolution of an assigned protest or contract dispute, including the imposition of sanctions for the filing of frivolous pleadings, making false statements, or other disciplinary actions. See subpart F of this part.

#### § 17.7 Filing and computation of time.

(a) Filing of a protest or contract dispute may be accomplished by overnight delivery, by hand delivery, by Fax, or, if permitted by Order of the ODRA, by electronic filing. A protest or contract dispute is considered to be filed on the date it is received by the ODRA during normal business hours. The ODRA’s normal business hours are from 8:30 a.m. to 5 p.m. Eastern Time. A protest or contract dispute received after the time period prescribed for filing shall not be considered timely filed. Service shall also be made on the Contracting

Officer (CO) pursuant to §§17.15(e) and 17.27(d).

(b) Submissions to the ODRA after the initial filing of a protest or contract dispute may be accomplished by any means available in paragraph (a) of this section. Copies of all such submissions shall be served on the opposing party or parties.

(c) The time limits stated in this part are calculated in business days, which exclude weekends, Federal holidays and other days on which Federal Government offices in Washington, DC are not open. In computing time, the day of the event beginning a period of time shall not be included. If the last day of a period falls on a weekend or a Federal holiday, the first business day following the weekend or holiday shall be considered the last day of the period.

(d) Electronic Filing—Procedures for electronic filing may be utilized where permitted by Order of the ODRA on a case-by-case basis or pursuant to a Standing Order of the ODRA permitting electronic filing.

#### **§ 17.9 Protective orders.**

(a) The ODRA may issue protective orders addressing the treatment of protected information, including protected information in electronic form, either at the request of a party or upon its own initiative. Such information may include proprietary, confidential, or source-selection-sensitive material, or other information the release of which could result in a competitive advantage to one or more firms.

(b) The terms of the ODRA's standard protective order may be altered to suit particular circumstances, by negotiation of the parties, subject to the approval of the ODRA. The protective order establishes procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for access to the material under the order by submitting an application to the ODRA, with copies furnished simultaneously to all parties. The application shall establish that the

applicant is not involved in competitive decision-making for any firm that could gain a competitive advantage from access to the protected information and that the applicant will diligently protect any protected information received from inadvertent disclosure. Objections to an applicant's admission shall be raised within two (2) days of the application, although the ODRA may consider objections raised after that time for good cause.

(d) Any violation of the terms of a protective order may result in the imposition of sanctions, including but not limited to removal of the violator from the protective order and reporting of the violator to his or her bar association(s), and the taking of other actions as the ODRA deems appropriate. Additional civil or criminal penalties may apply.

### **Subpart B—Protests**

#### **§ 17.11 Matters not subject to protest.**

The following matters may not be protested before the ODRA, except for review of compliance with the AMS:

- (a) FAA purchases from or through, State, local, and tribal governments and public authorities;
- (b) FAA purchases from or through other Federal agencies;
- (c) Grants;
- (d) Cooperative agreements;
- (e) Other transactions.

#### **§ 17.13 Dispute resolution process for protests.**

(a) Protests concerning FAA SIRs, solicitations, or contract awards shall be resolved pursuant to this part.

(b) Potential protestors should, where possible, attempt to resolve any issues concerning potential protests with the CO. Such attempts are not a prerequisite to filing a protest with the ODRA.

(c) Offerors or prospective offerors shall file a protest with the ODRA in accordance with §17.15. The protest time limitations set forth in §17.15 will not be extended by attempts to resolve a potential protest with the CO. Other than the time limitations specified in §17.15 for the filing of protests, the ODRA retains the discretion to modify